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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

BERNARD GREENBERG,

Plaintiff and Respondent,

v.

ZOHREH KHABUSHANI,

Defendant and Appellant.

2d Civil No. B211142  
(Super. Ct. No. SC 043980)  
(Ventura County)

A judgment creditor prevailed in a creditor's suit pursuant to Code of Civil Procedure section 708.210<sup>1</sup> to enforce a money judgment against real property held by a third person. The sole issue on appeal is whether the suit is barred by the statute of limitations in section 708.230. We affirm.

*STATEMENT OF FACTS AND PROCEDURAL HISTORY*

This action was preceded by a judgment entered in the Los Angeles County Superior Court in favor of respondent Bernard Greenberg on July 26, 2005, nunc pro tunc to June 3, 2005, against Michael Khabushani (Michael)<sup>2</sup> and Paramount Group, Inc.

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<sup>1</sup> All statutory references are to the Code of Civil Procedure unless otherwise stated.

<sup>2</sup> For clarity, we refer to the Khabushanis by their first names. No disrespect is intended.

(Paramount) for \$146,850.60, plus attorney fees of \$6,459.75, and interest from the date of judgment (the Los Angeles judgment).

The present action was filed on September 7, 2005, and began as a creditor's suit pursuant to section 708.210<sup>3</sup> seeking to reach Michael's interest in property held by Michael's wife, Zohreh Khabushani. The complaint alleged that Michael had a community property interest in residential properties located at 4027 Portulaca Place and 757 Triunfo Canyon Road, in Westlake Village, owned by Zohreh. It sought to have Zohreh's interest in the properties applied to the satisfaction of the Los Angeles judgment.

On November 17, 2006, Greenberg filed a first amended complaint (FAC) adding several parties and several new causes of action. The parties added to the lawsuit were Michael, Paramount, Saeed Ravanbakhsh, Nazila Sarmast, Hossein Haghighi, and Reza Nilipour.<sup>4</sup> The causes of action added to the lawsuit were for avoidance of fraudulent transfers and recovery of avoided transfers pursuant to sections 3439, 3439.05 and 3439.09. The FAC alleges that Ravanbakhsh, Sarmast, Haghighi, and Nilipour are beneficiaries of several trust deeds encumbering the Portulaca and Triunfo properties and that no consideration was paid for their interests. The FAC further alleges that funds received from Michael and Paramount were used between January 1, 2003, and December 31, 2005, to pay off loans on the Westlake properties, including a payment of

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<sup>3</sup> Section 708.210 states: "If a third person has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor, the judgment creditor may bring an action against the third person to have the interest or debt applied to the satisfaction of the money judgment."

The Law Revision Commission comment for this statute states in part: "An action may be brought under this article without the necessity of first levying under a writ of execution, examining the third person, or resorting to any other procedure for the satisfaction of the judgment." (17 West's Ann. Code Civ. Proc. (2009 ed.) foll. § 708.210, p. 348.)

<sup>4</sup> Sarmast, Haghighi, Ravanbakhsh and Nilipour were represented to be residents of Iran and did not appear at trial. However, information in Michael's bankruptcy petition filed in August 2005 states these parties have addresses in Santa Monica, Santa Ana and Parma, Ohio.

\$150,901.73 to Washington Mutual Bank for the Portulaca property on July 16, 2004, after Greenberg had filed the complaint resulting in the Los Angeles judgment. The FAC alleges that the transfers were fraudulent and voidable and made within four years of the commencement of the creditor's suit.

Zohreh and Michael were married on August 29, 1980. Before their marriage, they executed an agreement stating in part that property acquired by either of them after their marriage would remain separate property. In 1986, this was supplemented by a further agreement stating that each had certain bank accounts whose character was to be separate, that no gift between them would be valid without a writing, and that the earnings and income of each would be separate property. Neither of these agreements was recorded, nor were they disclosed to Greenberg.

Michael was in the business of purchase and sale of real estate as well as acting as an advisor or broker for investors who wished to either purchase real property or loan money secured by mortgages. Most of this was done through Paramount, a Nevada corporation. Michael was the president, chief executive officer and majority shareholder of Paramount.

The Portulaca property is the primary residence of the Khabushani family. On February 14, 2000, Paramount quitclaimed the property to Zohreh. On July 15, 2001, Paramount authorized the sale of the property to Zohreh for \$945,000. Zohreh made a down payment of \$50,000, and executed a mortgage for the balance of the purchase price. A grant deed from Paramount to Zohreh was executed by Michael, as president of Paramount, on July 18, 2001, and was recorded on September 25, 2001. The recorded deed contains the following language: "The grantors and grantees are comprised of the same parties who continue to hold the same proportionate interest." On the same date, September 25, 2001, an interspousal transfer deed also was recorded in favor of Zohreh.

On December 15, 2005, Zohreh gave a trust deed to Hossein Haghighi against the property in the amount of \$890,000. On December 27, 2005, Zohreh gave a trust deed to Reza Nilipour against both the Portulaca and Triunfo properties to secure an

additional indebtedness of \$375,000. Both of these interests were granted after judgment was entered in the Los Angeles action.

The Triunfo property is a condominium acquired for investment purposes. On February 24, 2000, Zohreh quitclaimed this property to Paramount. On August 31, 2001, Zohreh offered to buy the property from Paramount for \$450,000. Paramount adopted a resolution to sell the property and the transaction closed for a purchase price of \$435,000. Zohreh made a down payment of \$77,000 and executed a mortgage for the balance of the purchase price. On October 17, 2001, Michael and Zohreh, both officers of Paramount, executed a quitclaim deed in favor of Zohreh for this property. The deed as recorded on October 25, 2001, contains the following language: "Grantee are [*sic*] sole owner and shareholder of the Grantor Corporation [Paramount], and proportionate interest have [*sic*] not changed." On October 17, 2001, Michael also executed a quitclaim deed for this property in favor of Zohreh. This too was recorded on October 25, 2001. On October 20, 2003, Michael assigned a deed of trust dated September 19, 2003, in his favor against one of the properties to Saeed Ravanbakhsh. On December 21, 2004, Zohreh executed a deed of trust against the Triunfo property in favor of Nazila Sarmast to secure a debt of \$285,000.

After a six-day bench trial, the trial court issued a statement of decision and a judgment in favor of Greenberg against all defendants. Judgment was entered on August 1, 2005. The court rejected defendant's argument that the statute of limitations barred the creditor's suit on the ground that the Los Angeles judgment against Mike and Paramount was not issued until July 26, 2005, and Greenberg filed the creditor's suit less than two months later, on September 7, 2005. The court reasoned that Greenberg had no enforceable legal rights against Michael and Paramount and no basis to proceed against Zohreh to obtain satisfaction of the Los Angeles judgment until that judgment was entered.

The court found that the trust deeds given to Ravanbakhsh, Sarmast, Haghighi and Nilipour were subject to being set aside as fraudulent transfers as there was no admissible evidence that they were given in exchange for fair value. In addition, the

deeds in favor of Haghighi and Nilipour were given after entry of judgment in the Los Angeles case. The court also found that Paramount had an interest in the Portulaca and Triunfo properties equal to the interest that was transferred to Zohreh by Paramount by virtue of the deeds recorded September 25, 2001, and October 25, 2001.

The court entered judgment ordering that the trust deeds against the Portulaca and Triunfo properties in favor of Ravanbakhsh, Sarmast, Haghighi and Nilipour be set aside and that Greenberg could satisfy his judgment from the Triunfo and Portulaca properties.

### *DISCUSSION*

Zohreh contends the judgment against her must be reversed because the trial court erred by ruling that Greenberg's cause of action under the creditor's suit statutes accrued in 2005 when Greenberg obtained judgment against Mike and Paramount in the Los Angeles action. She asserts that the creditor's suit is barred by section 708.230 because the statute of limitations began to run and the cause of action accrued in 2001 when she acquired the properties.<sup>5</sup>

We independently review a statute of limitations defense where, as here, the relevant facts are undisputed. (*Snapp & Associates Ins. Services, Inc. v. Robertson* (2002) 96 Cal.App.4th 884, 889-890.)

When interpreting a statute, we follow well-established rules of construction. "The objective of statutory construction is to determine the intent of the enacting body so that the law may receive the interpretation that best effectuates that

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<sup>5</sup> In her opening brief, appellant also contends that the trial court erred in entering judgment against Mike because it is contrary to the court's finding in its statement of decision that Zohreh's assets are not community property and available for satisfaction of Greenberg's claim. This assertion is not supported by any authority and is deemed waived. (*Spitler v. Children's Institute International* (1992) 11 Cal.App.4th 432, 442.) Moreover, the judgment against Mike is proper as he was the president, chief executive officer and majority shareholder of Paramount. (See *Alexander v. Abbey of the Chimes* (1980) 104 Cal.App.3d 39, 47 [sole shareholder and CEO was liable for debt of corporation under alter ego doctrine].)

For the first time in her reply brief, appellant argues that the trial court misconstrued grant deeds relating to the real properties at issue. Under a well-established rule of appellate procedure, we do not review claims made for the first time in a reply brief. (*Shade Foods, Inc. v. Innovative Product Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 894, fn. 10.)

intent. [Citation.] 'We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [Citation.] The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context.' (*Ibid.*) If the plain, commonsense meaning of a statute's words is unambiguous, the plain meaning controls." (*Fitch v. Select Products Co.* (2005) 36 Cal.4th 812, 817-818.)

Section 708.230, subdivision (a) states in part: "[A]n action shall be commenced pursuant to this article before the expiration of the later of the following times: [¶] (1) The time when the judgment debtor may bring an action against the third person concerning the property or debt. [¶] (2) One year after creation of a lien on the property or debt pursuant to this title if the lien is created at the time when the judgment debtor may bring an action against the third person concerning the property or debt."

Zohreh asserts that the statute has run because the time within which the judgment debtor, Paramount, could bring an action against her under section 708.230, subdivision (a), is three years from the date she acquired the property from Paramount pursuant to section 338, subdivision (b).<sup>6</sup> We disagree.

To determine the intent of the Legislature and the meaning of a statute, we first look to the definitions provided in the statute. (See *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063 ["[i]f the Legislature has provided an express definition of a term, that definition ordinarily is binding on the courts"].) The definition applicable here is contained in section 680.250, which defines a "judgment debtor" as "the person against whom a judgment is rendered."

Under this definition, Paramount and Mike did not become "judgment debtors" until the Los Angeles judgment was entered against them in favor of Greenberg on July 26, 2005. Thus, they had no cause of action against Zohreh as "judgment debtors" until that date. As Greenberg filed his creditor's suit against the "third person," Zohreh, on September 7, 2005, the action is timely even if a three-year statute of

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<sup>6</sup> Section 338, subdivision (b) provides a three-year statute of limitations for "[a]n action for trespass upon or injury to real property."

limitations is applicable. To accept Zohreh's argument that the cause of action accrued at the time she acquired the property in 2001 would lead to an absurd result--Greenberg would have lost his cause of action under the creditor's suit statutes before he obtained the judgment against Mike and Paramount which permitted him to enforce his judgment under those statutes. (See, e.g., *Shephard v. Loyola Marymount Univ.* (2002) 102 Cal.App.4th 837, 846 [court must construe statute to avoid absurd or unreasonable result].)

The judgment is affirmed. Respondent shall recover costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P.J.

COFFEE, J.

Henry J. Walsh, Judge  
Superior Court County of Ventura

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Zohreh Khabushani, in pro. per., for Defendant and Appellant.

Law Offices of Mark Henry Shafron and Mark Henry Shafron for Plaintiff  
and Respondent.